

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

AMERI-KING Corporation

Huntington Beach, CA

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File Number: EB-06-LA-346

NAL/Acct. No.: 200732900009

FRN: 0016212938

**FORFEITURE ORDER**

**Adopted: February 20, 2008****Released: February 22, 2008**

By the Regional Director, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of eight thousand dollars (\$8,000) to AMERI-KING Corporation ("AMERI-KING"), in Huntington Beach, California, for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended ("Act").<sup>1</sup> On May 23, 2007, the Enforcement Bureau's Los Angeles Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of \$10,000 to AMERI-KING after determining that AMERI-KING apparently willfully and repeatedly operated a radio transmitter without a license. In this *Order*, we consider AMERI-KING's arguments that it did not willfully violate Section 301, that it did not repeatedly violate Section 301, that it has taken remedial measures to ensure future compliance, and that it has history of compliance with Commission's Rules.

**II. BACKGROUND**

2. On December 22, 2006, the Enforcement Bureau's Los Angeles Office received a request for assistance from the Air Force Rescue Coordination Center ("AFRCC") regarding interference to the 406 MHz Search and Rescue Satellite ("SARSAT") System. Investigation by the Los Angeles Office revealed that the interference was caused by the activation of an unregistered, emergency locator transmitter ("ELT") by AMERI-KING Corporation at an open field testing laboratory near Mission Viejo, California.<sup>2</sup> After the ELT was turned off, a Los Angeles agent admonished personnel from AMERI-KING and the testing laboratory working with AMERI-KING that ELTs tested in the United States must be operated in accordance with the Commission's Rules.

3. On December 26, 2006, a Los Angeles agent contacted, via a three-way conference call, the manager of the testing laboratory, and a representative from AMERI-KING and explained that the Commission's rules had no provisions for open air operation of an ELT on 406.025 MHz.<sup>3</sup>

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> ELTs operating on 406.0 – 406.1 MHz must be registered with the National Oceanographic and Atmospheric Administration. *See* 47 C.F.R. § 87.199.

<sup>3</sup> *See* 47 C.F.R. § 87.197 (ELT testing must avoid outside radiation. Bench and ground tests conducted outside of an RF-shielded enclosure must be conducted with the ELT terminated into a dummy load) and 47 C.F.R. § 87.475(d) (The frequencies available for assignment to ELT test stations are 121.600, 121.650, 121.700, 121.750, 121.800, 121.850, and 121.900 MHz.).

4. On December 28, 2006, the Los Angeles Office again responded to a request from AFRCC to locate and secure an unregistered ELT which was interfering with the SARSAT system on 406.025 MHz. This investigation revealed that AMERI-KING was testing a second ELT at a different testing laboratory, without the protection of a radio frequency shielded enclosure even though the operations manual for the ELT testing apparatus warned that operation without a shielded enclosure could cause a false distress alert.

5. On March 1, 2007, the Los Angeles Office sent a Letter of Inquiry (“LOI”) to AMERI-KING regarding its activation of ELTs in December of 2006 and asking AMERI-KING how it complied with the Commission’s Rules when testing ELTs. In its response to the LOI, AMERI-KING stated that the ELT in question is model AK-450, with an FCC identifier of L79AK-450. AMERI-KING stated that this model was certified by the FCC on July 24, 1995, as a licensed non-broadcast station transmitter. AMERI-KING further stated that it is in the process of upgrading model AK-450 from 121.5/243 MHz to 121.5/243/406 MHz. AMERI-KING also stated that it had applied for an aircraft radio station license in 1995 but that the application was returned because it was not required. AMERI-KING further stated that it applied for an experimental radio service license with the Commission on January 15, 2007. AMERI-KING also stated its tests had not been coordinated with the National Oceanographic and Atmospheric Administration (“NOAA”) because the test purpose was not a satellite qualitative test, and that its ELT terminated into a beacon tester, which is a “50 ohms dummy load.” AMERI-KING also acknowledged that all future testing in an open field had been disapproved by NOAA, until AMERI-KING’s ELT is fully COSPAS-SARSAT type approved. AMERI-KING’s response also included copies of a packing slip and invoice dated January 5, 2007 for a radio frequency shielded enclosure, and a statement that all future testing of ELTs will be conducted inside the shielded chamber.

6. On May 23, 2007, the Los Angeles Office issued a *NAL* in the amount of \$10,000 to AMERI-KING.<sup>4</sup> In the *NAL*, the Los Angeles Office found that AMERI-KING apparently willfully and repeatedly violated Section 301 of the Act by operating a radio transmitter without a license. AMERI-KING filed a response to the *NAL* on June 25, 2007 (“*Response*”) and then filed a supplement to that response on July 5, 2007. In the *Response* and supplement, AMERI-KING argues that it did not willfully violate Section 301, that it did not repeatedly violate Section 301, that it has taken remedial measures to ensure future compliance, and that it has a history of compliance with the Commission’s Rules.

### III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>7</sup> In examining the *Response*, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>8</sup>

8. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy, or communications or signals by radio within the United States except under and

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<sup>4</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732900009 (Enf. Bur., Western Region, Los Angeles Office, released May 23, 2007).

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

<sup>7</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>8</sup> 47 U.S.C. § 503(b)(2)(D).

in accordance with the Act and with a license granted under the provisions of the Act. Section 3(33) of the Act defines “communications by radio” as “the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, including all instrumentalities, facilities, apparatus, and services (among other things the receipt, forwarding, and delivery of communications) incidental to such transmission.”<sup>9</sup> Section 87.473(b) of the Commission’s Rules requires that “[l]icenses for ELT test stations will be granted only to applicants to train personnel in the operation and location of ELTs, or for testing related to the manufacturer or design of ELTs.”<sup>10</sup> Section 87.475(d) of the Rules states the frequencies available for ELT test stations are 121.600, 121.650, 121.700, 121.750, 121.800, 121.850, and 121.900 MHz and also states that ELT test station licensees must “[n]ot cause harmful interference to voice communications on these frequencies or any harmonically related frequency,” and must “[c]oordinate with the appropriate FAA Regional Spectrum Management Office prior to the activation of each transmitter.”<sup>11</sup>

9. A false ELT activation has the potential to severely impact the search and rescue network, resulting in responder resources being wasted and misdirected. According to the United States Coast Guard (“USCG”), air searches for false ELT activations cost the USCG thousands of dollars per search hour. Additional costs are incurred by rescue coordination centers, support personnel, and ground search and rescue responders. False activations also can cause harmful interference to the Search and Rescue Satellite System and to airplanes and vessels in the vicinity of the signal. Additionally, a false activation may conceal or prevent timely response to a legitimate distress signal.<sup>12</sup>

10. AMERI-KING argues that it did not willfully violate Section 301 of the Act because its ELT code messages were programmed as approved test protocols which were not “real distress message code[s],” that these “test protocol message decodes” were confirmed by COSPAS-SARSAT six months after the incidents took place, that these tests protocol message decodes were also confirmed by NOAA; that the purpose of the test on December 22, 2006, was to measure the ELT on 121.5/243 MHz, and was not intended as a 406 MHz satellite qualitative test; and that the purpose of the test on December 28, 2006, was a temperature test.<sup>13</sup> While we acknowledge the difficulty that AMERI-KING apparently had in testing its ELTs as it attempted to upgrade them from 121.5/243 MHz to 121.5/243/406 MHz, we find that AMERI-KING willfully violated Section 301 of the Act.<sup>14</sup>

11. Section 312(f)(1) of the Act, which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....”<sup>15</sup> The Los Angeles Office established, and AMERI-KING does

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<sup>9</sup> 47 U.S.C. § 153(33).

<sup>10</sup> 47 C.F.R. § 87.473(b).

<sup>11</sup> 47 C.F.R. § 87.475(d).

<sup>12</sup> *Grant Lam*, 22 FCC Rcd 6341 (EB 2007).

<sup>13</sup> AMERI-KING states that “[i]t is impossible to conduct [a] temperature test in a RF shielded environment.” AMERI-KING states that in this test the ELT terminated into a 50 ohms dummy load. However, AMERI-KING did not avoid outside radiation, as required by Section 87.197 of the Rules, given the continuing interference this ELT caused on 406 MHz to the SARSAT system.

<sup>14</sup> We do not dispute that the email messages sent by AMERI-KING to COSPAS-SARSAT and NOAA containing test protocol message decodes were confirmed by these agencies. However, the ELTs being tested by AMERI-KING were not yet certified by a COSPAS-SARSAT recognized test facility and, as such had to be conducted with the ELT terminated into a dummy load. 47 C.F.R. §§ 87.197, 87.199.

<sup>15</sup> 47 U.S.C. § 312(f)(1).

not deny, that an unregistered ELT was activated by AMERI-KING on 406 MHz at an open field, *i.e.* unshielded, testing facility in Mission Viejo, California, on December 22, 2006. On December 26, 2006, a Los Angeles agent informed AMERI-KING that the Commission had no provisions for open air operation of an ELT on 406.025 MHz. AMERI-KING does not dispute that it received that warning. On December 28, 2006, a Los Angeles agent again located an unregistered ELT which was being tested by AMERI-KING at a different testing facility. AMERI-KING does not dispute this second incident and that it was testing the ELT without the protection of a radio frequency shielded enclosure. In other words, AMERI-KING tested an ELT, which created emissions on 406 MHz, in an open field, in violation of the Commission's Rules,<sup>16</sup> was warned about its violation, and then proceeded to test another ELT, which created emissions on 406 MHz again, in an unshielded environment, a few days later. AMERI-KING's contention that the emissions on 406 MHz during the testing were accidental is unavailing. AMERI-KING intentionally tested its ELTs, which were designed to operate on 406 MHz, in unshielded environments twice, creating unauthorized emissions on 406 MHz on both occasions.

12. AMERI-KING also argues that its violations were not repeated because the two different incidents occurred at two different testing facilities, during the testing of two different ELTs. Additionally, after receiving warnings from the Los Angeles Office after each test, AMERI-KING stopped testing each device. We find no merit to this argument. Section 312(f)(2) of the Act, which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."<sup>17</sup> As detailed by the Los Angeles Office, AMERI-KING's actions consisted of testing ELTs, which created emissions on 406 MHz in unshielded environments on two days, December 26, 2006, and December 28, 2006. Because AMERI-KING had no license to operate on 406 MHz, we find that AMERI-KING repeatedly violated Section 301 of the Act.<sup>18</sup>

13. AMERI-KING also argues that it had taken steps to ensure compliance with the Rules, by ceasing testing the two ELTs after the warnings from the Los Angeles agent. AMERI-KING also states that it is coordinating all future testing with NOAA and the FCC's Los Angeles Office. These actions, while welcome given that AMERI-KING's previous testing resulted in interference on multiple days to the AFRCC 406 MHz Search and Rescue Satellite, do not justify a reduction in the proposed forfeiture amount. The Commission has determined that it expects the entities it regulates to correct errors when they are brought to the regulated entity's attention and that such correction is not grounds for a downward adjustment in the forfeiture.<sup>19</sup>

14. Finally, AMERI-KING argues that the proposed forfeiture amount should be reduced because it has a history of compliance with the Commission's Rules. We have reviewed our records and we agree. Consequently, we reduce the forfeiture amount to \$8,000.

15. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and

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<sup>16</sup> See 47 C.F.R. § 87.197 (ELT testing must avoid outside radiation. Bench and ground tests conducted outside of an RF-shielded enclosure must be conducted with the ELT terminated into a dummy load).

<sup>17</sup> 47 U.S.C. § 312(f)(2).

<sup>18</sup> AMERI-KING also argues that it confirmed with the Commission's Office of Engineering and Technology ("OET") that it does not need to obtain an experimental license to upgrade its ELTs to 406 MHz. We note that OET, in its correspondence, also informed AMERI-KING that "ELTs are regulated . . . and are required to be tested under the FCC's equipment verification procedure . . . and be certified by a recognized COSPAS/SARSAT test facility. All tests done prior to certification must be done in an RF-shielded enclosure and into dummy loads (87/197)." *Response* at Attachment 20.

<sup>19</sup> *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that AMERI-KING willfully and repeatedly violated Section 301 of the Act. Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture from \$10,000 to \$8,000 is warranted.

#### IV. ORDERING CLAUSES

16. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, AMERI-KING Corporation, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$8,000 for willfully and repeatedly violating Section 301 of the Act.<sup>20</sup>

17. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>21</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures.

18. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to AMERI-KING Corporation, at its address of record.

#### FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau

<sup>20</sup> 47 U.S.C. §§ 301, 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>21</sup> 47 U.S.C. § 504(a).